

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALAN P. WOODRUFF, et al.,

Plaintiffs,

v.

MARY HERRERA, in her official capacity as
New Mexico Secretary of State,

Defendant.

CIV 09-00449 JCH/KBM
consolidated with
CIV 10-00123 JCH/KBM
CIV 10-00124 JCH/KBM

ORDER GRANTING MOTION TO STAY DISCOVERY

THIS MATTER is before the Court on the Motion to Stay Discovery filed by Defendant Mary Herrera (*Doc. 218*). Having carefully reviewed the parties' submissions and court file records, I find the motion well taken and will grant it.

In CIV 09-00449 JCH/KBM (*Woodruff I*), I permitted limited discovery despite Defendant's Motion to Dismiss filed August 18, 2009 based upon the time-sensitive nature of his claims in that action. Plaintiff Woodruff now seeks to again depose the Secretary of State and Don Francisco Trujillo, and Defendant strenuously objects.

Defendant requests that the Court stay discovery until resolution of the pending motions to dismiss in CIV 10-686 JCH/KBM (*Woodruff IV*). Two other cases filed by Plaintiff – CIV 10-00123 JCH/KBM (*Woodruff II*) and CIV 10-00124 JCH/KBM (*Woodruff III*) – were previously consolidated with the instant action. Plaintiffs oppose the motion and argue that the issues for which they seek to redepose Herrera and Trujillo relate to the *Woodruff IV* lawsuit, such that Defendant's motion to stay discovery was filed in the wrong case. *See Doc. 219*.

There appears to be some confusion regarding the status of *Woodruff IV* which was originally assigned to District Judge Browning. Defendant moved for consolidation of that case with the three cases already consolidated and assigned to Judge Herrera. *See* CIV 10-686 at *Docs. 3* & CIV 09-449 at *Doc. 199*. On September 8, 2010, Judge Browning granted the motion to consolidate “in part” stating that “Judge Herrera was amenable to this matter being consolidated with the pending, related cases assigned to her.” *Woodruff, et al. v. Herrera, et al.*, CIV 10-686 at *Doc. 19* (D.N.M. Sept. 8, 2010). Judge Browning further stated, however, that the matter would be transferred to Judge Herrera at which time she “can then decide . . . whether to consolidate this matter . . . or keep them separate.” *Id.* at 2. Plaintiff correctly points out that no official order consolidating the matter has been entered by Judge Herrera.

It appears that Judge Browning’s September 8 Order was not distributed to Judge Herrera’s chambers at the time it was filed. Thus, I am not sure that Judge Herrera is even aware the motion awaits her ruling. Because of the possible confusion issue at this point, I find that it is in the interest of judicial efficiency to stay discovery in all four related “Woodruff” cases pending resolution of the consolidation issue and Defendant’s motions to dismiss.

Wherefore,

IT IS HEREBY ORDERED that Defendant’s Motion to Stay Discovery (*Doc. 218*) is **GRANTED**. Discovery in this matter is stayed in *Woodruff I - IV* pending the resolution of the consolidation issue and Defendant’s motions to dismiss in CIV 10-0686 JCH/KBM.

IT IS FURTHER ORDERED that this Order also be filed in that case.



 UNITED STATES MAGISTRATE JUDGE